income, and may fairly be taxed as such when its final realization in cash furnishes a convenient opportunity. It seems certain that this result must be reached under the new income tax, for much of the Supreme Court's reasoning is equally applicable to that statute, and the very small deduction expressly allowed to mine-owners "for depletion of ores" necessarily implies that the cash receipts derived from such depletion are to be treated as "gross income." INCOME TAX ACT, § 2, B, G, b. Such is the rule under the English statute, where the inference is less compelling. *Alianza Co.* v. *Bell*, [1906] App. Cas. 18. *Contra*, but overruled, *Knowles & Sons* v. *McAdam*, L. R. 3 Exch. D. 23.

TELEGRAPH AND TELEPHONE COMPANIES — STANDARD OF CARE — WHETHER COMPANY MUST EXERCISE ORDINARY OR GREAT CARE TO KEEP ITS INSTRUMENTS IN WORKING ORDER. — The defendant telephone company used a night bell to give the operator notice of calls. Owing to a defect in the mechanism of the bell, it failed to ring, and a call by the plaintiff was not answered. *Held*, that the telephone company is bound to use only ordinary care to keep its facilities in working order. *Southern Bell Telephone Co.* v. *Glawson*, 79 S. E. 488 (Ct. of Appeals, Ga.).

An exception to the general rule that public service companies must exercise the highest degree of care consistent with performance of the service, exists in the case of telephone and telegraph companies. A majority of cases require only ordinary care under the circumstances. *Western Union Telegraph Co.* v. *Hays*, 63 S. W. 171 (Tex.); see *Ellis* v. *American Telegraph Co.*, 13 Allen 226, 234. Some authority imposes a duty to use the utmost care. *Marr* v. *Western Union Telegraph Co.*, 85 Tenn. 529, 3 S. W. 496. See *Fowler* v. *Western Union Telegraph Co.*, 80 Me. 381, 388. The latter cases seem preferable, for the considerations of public policy which support the rule are applicable to all public services. See 27 HARV. L. REV. 178. The difference, however, between the standard of the utmost care and the standard of reasonable care under the circumstances, with due emphasis laid upon the importance of the circumstances, seems more rhetorical than actual, even in public service. *Gardner* v. *Boston Elevated Ry. Co.*, 204 Mass. 213, 90 N. E. 534.

TORTS — INTERFERENCE WITH BUSINESS — DAMAGE TO BUSINESS REPUTATION BY WRONGFUL ACT. — The defendants, falsely representing themselves to be the husbands of the two females who accompanied them, obtained rooms in the plaintiffs' hotel for immoral purposes, and conducted themselves in an obscene and disorderly manner, to the disturbance of the other guests. The plaintiffs sue for loss of patronage consequent upon the defendants' acts. *Held*, that a demurrer to the plaintiffs' declaration be overruled. *Hall* v. *Galloway*, 135 Pac. 478 (Wash.).

The reasoning upon which the court upholds the declaration is that the facts stated amount to a private nuisance. *Sullivan* v. *Waterman*, 39 Atl. 243, 20 R. I. 273. But it is not necessary to bring this wrong under the vague definition of a private nuisance in order to grant recovery. Relief should be afforded on general principles of tort liability. As a part of good will, the right to business reputation has been recognized as a valuable property right. *Boon* v. *Moss*, 70 N. Y. 465. Business reputation is carefully protected from injury caused by false spoken or written words. *Ostrom* v. *Calkins*, 5 Wend. (N. Y.) 263; *Ohio & Mississippi Ry. Co.* v. *Press Publishing Co.*, 48 Fed. 206. Equity will enjoin the infringement of it by the wrongful use of an established trade name. *Millington* v. *Fox*, 3 Myl. & Cr. 338. The enjoyment of this right has also been protected by an injunction against imitating, in other respects, the plaintiff's manner of doing business, as by the use of similar uniforms for servants. *Stone* v. *Carlan*, 3 Code Rep. (N. Y.) 360. In the principal case the defendants have violated this right by intentionally engaging in conduct, the

natural consequences of which were to cause damage to the plaintiffs' business reputation, and there is obviously no justification. All the essential elements of tort liability are present, therefore, although it is difficult to bring the action within any existing classification. *Rice* v. *Coolidge*, 121 Mass. 393.

TORTS — LIABILITY OF A MAKER OR VENDOR OF A CHATTEL TO THIRD PERSONS INJURED BY ITS USE — NATURE AND GROUNDS OF LIABILITY — The defendant negligently allowed some poisonous matter to get into some meat which it was canning. The plaintiff bought some of this meat from a third party relying on the defendant's representations as to the purity of its products. Because the plaintiff served this bad meat to a customer his trade was injured. A demurrer to a declaration alleging these facts was sustained by the lower court. *Held*, that such ruling is error, as there was an implied warranty to all subvendees that the goods were fit. *Mazetti* v. *Armour & Co.*, 135 Pac. 633 (Wash.).

It is well settled that a warranty only runs to the warrantor's immediate vendee. *Prater* v. *Campbell*, 110 Ky. 23, 60 S. W. 918; *Post* v. *Burnham*, 83 Fed. 79; but see *Childs* v. *O'Donnell*, 84 Mich. 533, 538, 47 N. W. 1108, 1109. This strict rule as to warranties has doubtless influenced courts that have held that a vendor should not be liable in tort in cases where there is no privity of contract between the parties. The latter conclusion is clearly unsound. But courts should not go to the other extreme and hold manufacturers absolutely liable to all persons for injuries from their products. The defendant in the principal case would be liable for negligence, indeed, on principle and by the weight of authority. *Tomlinson* v. *Armour & Co.*, 75 N. J. L. 748, 70 Atl. 314; *Ketterer* v. *Armour & Co.*, 200 Fed. 322. *Contra*, *Nelson* v. *Armour Packing Co.*, 76 Ark. 352, 90 S. W. 288. Furthermore, there is a liability imposed in many states on one who makes an honest misrepresentation, in favor of one who justifiably has relied thereon, provided the former had better means of knowledge as to the truth of the statements than the party injured. *Goodale* v. *Middaugh*, 8 Colo. App. 223; *Kellogg* v. *Holm*, 82 Minn. 416, 85 N. W. 159. *Contra*, *Sims* v. *Eiland*, 57 Miss. 83. See 24 HARV. L. REV. 415, 427 *et seq.* Generally, in cases similar to the principal case, it would be difficult to prove actual reliance on express statements, such as advertisements. But as the plaintiff has alleged such reliance it would seem that on demurrer he could recover for the damage resulting therefrom. *Blood Balm Co.* v. *Cooper*, 83 Ga. 457, 10 S. E. 118. *Cf. Roberts* v. *Anheuser-Busch Brewing Ass'n*, 211 Mass. 449, 98 N. E. 95.

TRIAL — PROVINCE OF COURT AND JURY — RIGHT OF APPELLATE COURTS TO DIRECT A JUDGMENT NOTWITHSTANDING VERDICT. — The defendant at the trial of the present action requested a directed verdict which, upon the evidence presented, should have been given. The request was refused, however, and the jury found a verdict for the plaintiff. A Massachusetts statute provides that the Supreme Court under such circumstances may direct the entry of a judgment for the party in whose favor a verdict should have been directed below. The defendant, excepting to the ruling of the lower court, requested that this be done. *Held*, that the court will direct that judgment be entered for the defendant. *Bothwell* v. *Boston Elevated Ry. Co.*, 102 N. E. 665 (Mass.).

The United States Supreme Court recently denied the right to direct the entry of a similar judgment on the ground that the plaintiff's constitutional right to trial by jury required a new trial. *Slocum* v. *N. Y. Life Ins. Co.*, 228 U. S. 364, 33 Sup. Ct. 523. See article on this question by J. S. Thorndike in 26 HARV. L. REV. 732. The practical inconvenience of such a decision is obvious. The parties must undergo the annoyance and expense of a new trial though the evidence warrants only a directed verdict, and though the